

Maine Revised Statutes
Title 35-A: PUBLIC UTILITIES
Chapter 25: REGULATION OF FACILITIES IN THE PUBLIC WAY

§2503. PROCEDURE FOR APPLICATION FOR PERMIT

1. Application. The application must be in writing and describe the facilities, the requested location, evidence of notice provided to owners of facilities in the applicable public way, the minimum depth if an underground facility, the minimum height of any attached wires or cables, if aboveground facilities, all in the manner and form that the licensing authority requires.

[2015, c. 216, §1 (AMD) .]

2. Notice. The applicant may give public notice of the application by publishing its description of the proposed facility once in a newspaper circulated in the municipality or municipalities encompassing the limits of the proposed location. The applicant shall send a copy of any application filed with the Department of Transportation to the municipal clerk of each municipality in which the facilities are located, or to the clerk of the county commissioners in the case of facilities within an unorganized township, except that the applicant may, without publication of its application, place its facility described in its application on receipt of a permit from the licensing authority as may be otherwise provided.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Objection. Objection to the application may be filed according to this subsection.

A. Any person owning property that abuts the applicable public way or any owner of facilities in the applicable public way may file a written objection with the appropriate licensing authority within 14 days after publication by the applicant. The written objection must state the reason for the objection. The written objection must be served by delivery in hand or by registered or certified mail. [2015, c. 216, §2 (AMD) .]

B. If the applicant proceeds without publication of the application, any person owning property that abuts the applicable public way or any owner of facilities in the applicable public way may file a written objection with the appropriate licensing authority within 90 days after installation of the facility described in the application. The written objection must state the cause for the objection. The written objection must be served by delivery in hand or by registered or certified mail. [2015, c. 216, §2 (AMD) .]

[2015, c. 216, §2 (AMD) .]

4. Hearing. The licensing authority, on receipt of a written objection, shall fix a time and place for hearing and shall give 7-days' notice of hearing by registered or certified mail to the applicant and any person filing law objections. The licensing authority's adjudication on the validity of the applicant's notice or procedures is final and conclusive. If the licensing authority finds its notice of hearing, the applicant's notice of application or the applicant's procedures defective, it may fix a new time and place for hearing, shall order appropriate notice to be published or defect corrected and shall adjourn the hearing to meet at the time and place fixed in its order.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. Permits. The location permit shall specify the approximate location of the facility and the minimum depth of any pipes or conduits below, or the minimum height of any wires or cables above, the earth's surface. The licensing authority may specify in the permit other requirements determined necessary in the best interests of the public safety and use of the right-of-way so as not to obstruct use for public travel.

[1987, c. 141, Pt. A, §6 (NEW) .]

6. Liability. Installation and maintenance of the facility and its appurtenances in accordance with the terms of the permit and the provisions of chapter 23 and this chapter relieve the applicant of liability to others by reason of location of its facility and appurtenances and no person has any right of recovery under Title 23, section 3655, because of the location, installation and maintenance and the applicant will be liable only for acts of negligence in the installation or maintenance of the facility and its appurtenances.

[1987, c. 141, Pt. A, §6 (NEW) .]

7. Alteration. After the facility is installed, the licensing authority may alter or amend the permit if the installation is determined to impair the highway improvement or interfere with the free and safe flow of traffic. The procedure for an applicant, or for the licensing authority under this subsection, to alter or amend the terms of a location permit after construction or installation of the facility is the same as for any original application for a permit.

[1987, c. 141, Pt. A, §6 (NEW) .]

8. Relocation. No location permit or alteration of any original location permit is required for relocation of the facility when the relocation is because of the construction, reconstruction or relocation of the way, except when required by federal law applicable to highways that have been designated for federal aid. The licensing authority, except in such cases of federal aid construction, shall issue a new location permit to evidence the legality of the relocation.

[1987, c. 141, Pt. A, §6 (NEW) .]

9. Replacement and additions. A new location permit is not required for the replacement of an existing facility or appurtenance or for additions to the facility and appurtenances made within the terms of the existing permit.

[1987, c. 141, Pt. A, §6 (NEW) .]

10. Service lines and improvements. An additional location permit is not required for any person to attach or install wires, cables or associated equipment, service lines or extensions to its facilities for which a permit has been issued or which are declared to be legal structures under this section, provided that these attachments or installations conform to the conditions of the permit. These attachments or installations are deemed legal structures.

[1987, c. 141, Pt. A, §6 (NEW) .]

11. Ordered and existing locations. No location permit is required for any facilities constructed in accordance with an order of the municipality issued in writing and signed by the municipal officers, or by county commissioners in the case of unorganized townships, and agreed to by the owner of the facilities. When installed in accordance with the order, the facilities are deemed legal structures.

No location permit is required for any facilities which existed within the limits of a private way before the legal acceptance of the private way as a public way and the facilities are deemed legal structures.

[1987, c. 141, Pt. A, §6 (NEW) .]

12. Records. The licensing authority shall maintain a record of all location permits issued and presently valid.

[1987, c. 141, Pt. A, §6 (NEW) .]

13. Appeals. Appeals from decisions shall be conducted in the following manner.

A. The licensing authority shall give notice of their decision to the applicant and to any person filing objections as soon as practicable. [1987, c. 141, Pt. A, §6 (NEW) .]

B. Any person aggrieved by a decision of the Department of Transportation or the county commissioners may appeal to the Superior Court in the manner provided in Title 23, sections 2063 to 2066, relating to highways. [1987, c. 141, Pt. A, §6 (NEW) .]

C. In the case of municipalities, the decision of the municipal officers or their designees shall be filed with the clerk of the municipality within one week from the date of the decision. Within 2 weeks from the filing, any person aggrieved may appeal from their decision to the county commissioners by filing notice of appeal with a copy of the original petition and adjudication with the clerk of the municipality and with the clerk of the board of county commissioners.

(1) Once a person aggrieved files a notice of appeal of a revision made by a municipality, the municipal officers may review a decision previously made by them to reconsider the issues involved or they may act as a review board to evaluate a decision made by their designees. The municipal officers may alter decisions during the 2-week appeal period, but the person aggrieved retains the initiative to pursue the appeal if not satisfied with the altered decision.

(2) The county commissioners shall immediately entertain the appeal and give 2 weeks' notice of the time and place of hearing, which must be held within 30 days from the time the appeal is filed. The hearing may be adjourned from time to time, not exceeding 30 days in all, and the commissioners shall file their decision within 30 days from the time the hearing is closed and transmit a copy of it to the applicant, any other parties to the appeal and to the clerk of the municipality, who shall immediately record it. [1987, c. 141, Pt. A, §6 (NEW) .]

[1987, c. 141, Pt. A, §6 (NEW) .]

14. Opening permits. Notwithstanding section 2303, 2502 or 2503, the applicant must procure opening permits before making any underground installation as provided in chapter 23 and Title 23, sections 54 and 3351 to 3359.

[1987, c. 141, Pt. A, §6 (NEW) .]

15. Agreement. The granting of a permit by the Department of Transportation, municipal officers or their designees or county commissioners, under this section, constitutes an agreement between the utility and the State or political subdivision of the State.

[1987, c. 141, Pt. A, §6 (NEW) .]

16. Rules. The Department of Transportation may adopt reasonable rules to administer this section. These rules may include procedures for application and issue of permits and the conduct of hearings.

The department may adopt rules authorizing public utilities to install facilities on or over the surface of public ways for which the department is the licensing authority. The rules must set forth the following:

A. General terms and conditions regarding the location of the facilities; and [1993, c. 540, §1 (NEW) .]

B. Reasonable requirements determined necessary to protect public safety and to permit unobstructed public travel along the affected public way. [1993, c. 540, §1 (NEW) .]

Utilities installing facilities in accordance with these rules are not required to receive a separate written location permit as required by section 2501, subsection 2. Facilities installed in accordance with the rules are legal structures and are deemed installed pursuant to a written location permit.

[1993, c. 540, §1 (AMD) .]

17. Relocation in certain municipalities. The Department of Transportation has the exclusive rights, powers and duties of municipal officers under section 2517 when state or state-aid highways are affected, except for state and state-aid highways in the compact areas of urban compact municipalities as defined in Title 23, section 754.

[1999, c. 753, §11 (AMD) .]

18. Rights of applicable licensing authority. Nothing in Title 30, section 2151, subsection 1, paragraph H, impairs the rights of the applicable licensing authority.

[1987, c. 141, Pt. A, §6 (NEW) .]

19. Legal effect. Existing facilities and appurtenances maintained and now in use within a public way, together with any facilities and appurtenances installed and maintained in accordance with this section are deemed legal structures and the party maintaining them is liable for maintaining them only for acts of negligence in the erection or maintenance of them. The failure of the licensing authority to grant or deny a permit for which application is made within 60 days of filing constitutes the issuance of a location permit.

[1987, c. 141, Pt. A, §6 (NEW) .]

20. Exclusive method. Compliance with this section by any person is the exclusive method of obtaining the rights and privileges conferred in this section and no person or cooperative may be required, with respect to the location of its facilities, to comply with or be subject to any other law, including, but not limited to, Title 30-A, chapter 165.

[1995, c. 254, §5 (AMD) .]

21. Default standards. This subsection governs standards applied by local licensing authorities.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Local licensing authority" means municipal officers or their designees or county commissioners.

(2) "Underground location standards" means standards governing the location and depth of and distance between utility facilities, including the underground portion of aboveground facilities such as utility pole bases. [2015, c. 216, §3 (NEW) .]

B. For all state and state-aid highways within compact areas of urban compact municipalities as defined in Title 23, section 754, rules adopted by the Department of Transportation under subsection 16 serve as the minimum standard. [2015, c. 216, §3 (NEW) .]

C. Except within areas identified in paragraph B, a local licensing authority may adopt underground location standards for utility facilities within its jurisdiction as designated in section 2502, subsection 1, paragraph A or B. If a local licensing authority has not adopted underground location standards for utility facilities, the underground location standards adopted by the Department of Transportation under subsection 16 govern. [2015, c. 216, §3 (NEW) .]

D. A local licensing authority that has not adopted underground location standards for utility facilities in accordance with paragraph C may grant exceptions to the underground location standards adopted by the Department of Transportation under subsection 16 if the licensing authority finds one of the following:

- (1) Application of the underground location standards would present an exceptional hardship or unreasonable cost under the circumstances and alternative standards will adequately ensure public safety;
- (2) All affected parties, as determined by the local licensing authority, have agreed to alternative underground location standards that will adequately ensure public safety;
- (3) A unique situation exists that requires an adjustment of the standards in a manner that ensures public safety; or
- (4) The underground location standards exceed the limits of the available space within the right-of-way. [2015, c. 216, §3 (NEW).]

E. The owners of a new, planned underground utility facility shall coordinate directly with owners of existing underground utility facilities in the public way during the design phase of the new, planned facility. Both the new and existing facility owners shall make reasonable accommodation for each other's facilities in accordance with applicable underground location standards to allow ease of access to and maintenance of those facilities and adequately ensure public safety. [2015, c. 216, §3 (NEW).]

[2015, c. 216, §3 (RPR) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1993, c. 163, §3 (AMD). 1993, c. 540, §1 (AMD). 1995, c. 254, §5 (AMD). 1999, c. 753, §§11,12 (AMD). 2015, c. 216, §§1-3 (AMD).

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